

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5812 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

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SANCHETI YARNS LTD

Versus

BANK OF INDIA

Appearance:

1. Special Civil Application No. 5812 of 2002
MR UTPAL M PANCHAL for Petitioner No. 1
..... for Respondent No. 1
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CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 27/06/2002

ORAL JUDGEMENT

The petitioner has challenged by way of this
petition order dated 21st September, 2001 in Original

Application No. 95/1996 passed by the Debts Recovery Tribunal, Ahmedabad.

2. Bank of India, Gopipura Branch, Surat is the applicant in Original Application No. 95/1996 filed before the Tribunal and in the said proceedings, on 15th November, 1997, a written statement was filed on behalf of the petitioner herein. It is an admitted position that till 23rd January, 2001, except for exchange of pleadings the matter before the Tribunal had not proceeded any further. On 23rd January, 2001, vide Exh. A/34, the Bank moved an amendment application whereby it was prayed on behalf of the Bank that the word 'private' appearing in the name of the petitioner, wherever appearing in the Original Application and the record and proceedings, may be permitted to be deleted and the Original Application may be permitted to be further amended by adding one paragraph as reproduced in the amendment application. The petitioner herein opposed the amendment application by filing the affidavit-in-reply dated Nil February, 2001. On 21st September, 2001, after hearing the learned advocates for both the sides, the Tribunal permitted the Bank to amend the Original Application and directed that the respondents may file written statement and/or counter affidavit to the amended plaint before the next date of hearing. The next date of hearing was originally fixed on 15th October, 2001 and, admittedly, till date, the matter has not progressed any further. Today, during the course of hearing it was stated that the next date of hearing is fixed on 5th August, 2002.

3. Mr. Utpal Panchal appearing for the petitioner submitted that the impugned order passed by the Tribunal is an interlocutory order and hence is not an order within the meaning of Section 20 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and therefore, it was contended that the said order was not appealable and for this purpose an inherent indication is available in Section 21 which requires that 75% of the amount due as determined by the Tribunal is payable where an appeal is preferred and this is a mandatory condition. It was submitted that in these circumstances, the Act does not envisage an appeal against an interlocutory order and hence, there was no occasion to approach the Appellate Authority and the petitioner had no alternative statutory remedy; that the bar of jurisdiction of a Court or any other authority stipulated in Section 18 of the Act was subject to the exception of exercise of jurisdiction under Articles 226 and 227 of the Constitution of India. It was further submitted that the

amendment, which was directed by the Tribunal, could not be stated to be an amendment as understood, but it was a case of change of the cause title of the suit i.e. change of the defendant and hence the same was not permissible. It was further submitted that the bar of limitation would apply to filing of a suit against the defendant and in light of the same the amendment could not have been allowed which amounted to giving a go by to the statutory period of limitation prescribed under the Act.

4. Section 19 of the Act lays down the requirement and the mode of application to the Tribunal and Sub Section (4) of said Section states that the Tribunal after hearing the appellant and the defendant, may pass such orders on the application as it thinks fit to meet the ends of justice. Section 20 (1) of the Act provides for an appeal to the Appellate Tribunal and it stipulates that any person aggrieved by an order made, or deemed to have been made, by a Tribunal under the Act may prefer an appeal.(emphasis supplied) Thus, on conjoint reading of sub-section(4) of Section 19 and sub-section(1) of Section 20, it is abundantly clear that there is no restriction on the Tribunal in passing any order and all orders are appealable orders. The use of words "an order" indicate any order : no restriction as canvassed can be read. The language employed being clear and unambiguous, it is not possible to restrict the scope of the phrase "an order".

5. The reliance placed on provisions of Section 21 of the Act requiring pre-deposit of 75% of the debt due as determined by the Tribunal under Section 19 of the Act would not come in the way of the petitioner in preferring an appeal against the impugned order inasmuch as, where the Tribunal has not determined any amount, it would not be necessary to make any pre-deposit.

6. Section 22 of the Act specifically lays down that except for the situations mentioned in Clauses (a) to (h) of sub-section (2) of the said Section, the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, the only requirement being that the Tribunal shall be guided by principles of natural justice and further the Tribunal shall have powers to regulate its own procedure. Hence, the entire scheme of the Act is to enable the Tribunal to expeditiously adjudicate and direct recovery of debts due to banks and financial institutions and matters connected therewith or incidental thereto.

7. This is not a case where an interested person is not a party in the original proceedings and is sought to be impleaded at a belated stage. In fact, the petitioner all along was aware of the fact that the Bank was entitled to recover its dues in light of the loan facility availed off by the petitioner, and as can be seen from the written statement except for paragraphs 8 and 9, the petitioner has not raised any other objection before the Tribunal while proceeding with the case. Even after raising the objection, vide paragraph 8 and 9 of the written statement of 15th February, 1997, the petitioner has chosen to sit tight without following up this preliminary objection before the Tribunal. The petitioner having participated in the proceedings on merits cannot now take a plea that it was not a party in the Original Application and is being impleaded only by way of an amendment. Thus, apparently, there is no prejudice caused to the petitioner.

8. In these circumstances, it is not possible to hold that the Tribunal has passed the impugned order without jurisdiction or without taking into consideration all relevant facts and material on record or without following principles of natural justice. There is no case made out to interfere with the impugned order of the Tribunal. It will be open to the petitioner to approach the appellate authority and avail the alternative statutory remedy if so advised. The petition is summarily rejected.

(D.A. MEHTA, J.)

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